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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/780,177 | 02/09/2001 | James D. Hooberman | HCI-10002/38 | 8403 |

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| EXAMINER | |
|---|---|
| USTARIS, JOSEPH G | |
| ART UNIT | PAPER NUMBER |
| 2424 | |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 09/780,177 | HOOBERMAN, JAMES D. | |
| | Examiner | Art Unit | |
| | JOSEPH G. USTARIS | 2424 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *02 October 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1,4 and 6* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,4 and 6* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *12 April 2002* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed October 2, 2008 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, claim 1 recites a virtual sound system that is able to provide a sleep inducing sound and provides access to web links. Yoshida discloses a similar system where it also provides a sleep inducing sound and provides access to other materials (e.g. cable television signals) (See Fig. 1). It is unclear how it is a disincentive to provide a web link within the system when the claimed invention essentially accesses web pages (See applicant's Fig. 1) thereby providing the subject with a stimulated experience based on applicant's arguments. The examiner concludes based on the arguments and the claimed invention, that claim 1 is not solely for the purposes of inducing sleep but to also provide other types of information. Therefore, one of ordinary skill in the art of information distribution would find it beneficial to supply supplemental materials from other resources (e.g. the web

link information disclosed by www.standford.edu/~dement/sleeplinks.html) that relates to the subject that the user is using (e.g. the sweet sleep service).

Furthermore, applicant also argues that patterned changing colors along with sound to induce sleep is not a predictable result and that patterns of light and color change are well known to be stimulative. Applicant also provides documents to show that patterns of light and color change are known to be stimulative. However, it is noted that Yoshida already discloses that patterned changing of colors (e.g. color blue and the absence of blue) along with sound help to induce sleep (Col. 5, lines 18-30; Col. 7, lines 35-Col. 8, lines 60). Yoshida also discloses that changing colors and sound together at frequencies known to induce sleep actually help to induce sleep (See rejection below). Therefore, applying patterns and color changes at frequencies known to induce sleep will help the user/subject fall asleep, based on the teaching from Yoshida.

Applicant is reminded that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1, 4, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yoshida et al. (US 5982414) in view of www.standford.edu/~dement/sleeplinks.html and Meier et al. (US005496962A).

Claim 1, Yoshida discloses a virtual sound system (see Fig. 1 and 2) comprising a network-based program (bi-directional signal distribution system; i.e. CATV or Internet; Col. 1, lines 56-Col. 2, lines 15) for generating repetitive sleep including sound having a frequency between 3 and 30Hz at a user location (Col. 5, lines 18-30; Col. 7, lines 35-Col. 8, lines 60);

an access network for accessing the network-based program at the user location for generating the repetitive sleep inducing sound (Col. 9, lines 28-38).

Yoshida does not clearly disclose the web/internet link to information of: at least one of sleep related research, sleep products, or a sleep discussion chat room and a visual stream incorporating patterns and changing colors at the frequency of between 3 and 30 Hz and in concert with the sound.

Yoshida discloses the program could be link or delivered from Internet (Col. 9, lines 35-38). A Web link www.standford.edu/~dement/sleeplinks.html discloses the use of the web page "Links to other sleep sites" to link to corresponding web sites for retrieving additional research information, to a Chat room/forum and product information of a particular topic of interest, i.e., sleep disorder issues, is well known in the art. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Yoshida to have URLs link

www.standford.edu/~dement/sleeplinks.html to related Web sites for the benefit of providing users with additional information related to sleep disorder issues.

Yoshida also discloses that the visual stream changes in concert with the sound (Col. 7, lines 35-50 and Col. 7, lines 59-Col. 8, lines 40). Meier et al. (Meier) also discloses a system that provides visual effects with sounds. Meier discloses that the visual stream incorporates patterns and changes colors in concert with the sound (See col. 17 lines 21-43). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system disclosed by Yoshida to have the visual stream also incorporate patterns and change colors in concert with the sound, as taught by Meier, in order to enhance the video signal thereby increasing the interaction between the user and the system in order to efficiently convey certain frequencies to the user (See Yoshida col. 5 lines 18-41).

Furthermore, Meier discloses that the patterns and colors change in concert with sound as discussed above. Yoshida discloses visual stream that changes in concert with the sound, the sound having a frequency between 3 and 30 Hz (See Yoshida Col. 5, lines 18-30; Col. 7, line 35-Col. 8, line 40). Therefore, Yoshida in view of Meier would yield a predictable result of providing a visual stream incorporating patterns and changing colors at the frequency of between 3 and 30 Hz.

Claim 4, Yoshida further discloses a sound controller selected from the group consisting of volume control and sound play duration (see Fig. 4 with volume control and Fig. 5 for time duration of usage).

Claim 6, Yoshida further discloses an alarm clock routine (Col. 7, lines 19-22; Col. 8, lines 53-60).

***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSEPH G. USTARIS whose telephone number is (571)272-7383. The examiner can normally be reached on M-F 7:30-5 PM; Alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher S. Kelley can be reached on 571-272-7331. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Joseph G Ustaris/
Primary Examiner, Art Unit 2424